

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION**

**SPECIAL ORDER BY CONSENT**

**ISSUED TO**

**TOWN OF MIDDLEBURG**

**FOR**

**MIDDLEBURG WASTEWATER TREATMENT PLANT**  
**(VPDES PERMIT NO. VA0024775)**

**SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code ' ' 62.1-44.15(8a) and (8d) and 10.1-1185 between the State Water Control Board and the Town of Middleburg regarding the Middleburg wastewater treatment plant for the purpose of resolving certain violations of the State Water Control Law and Regulations.

**SECTION B: Definitions:**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code ' ' 62.1-44.7 and 10.1-1184.

3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code ' ' 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Town" means the Town of Middleburg.
7. "WWTP" means the Middleburg WWTP.
8. "NVRO" means the Northern Virginia Regional Office of DEQ, located in Woodbridge, Virginia.
9. "Permit" means Virginia Pollution Discharge Elimination System Permit No. VA0024775.

#### **SECTION C: Finding of Facts and Conclusions of Law**

1. The Town owns and operates the WWTP which discharges wastewater to Wancopin Creek in the Potomac River Basin. Discharges of wastewater are the subject of the Permit that was reissued on January 1, 2002, and expires on January 1, 2007.
2. The Board has evidence to indicate that the Town has violated VPDES Permit Regulation 9 VAC 25-31-190.A and the Permit. DEQ NVRO issued the Town three Warning Letters and two Notices of Violation ("NOV") for failure to submit a permit application with 180 days before the expiration of the existing Permit and failure to submit the final semiannual Appendix A monitoring results by July 10, 2001 as required by the Permit. The Warning Letters and NOV's are as follows: WL No. W2001-09-N-1004 issued September 10, 2001; WL No. W2001-09-N-1029 issued September 24, 2001; WL No. W2001-10-N-1003 issued October 10, 2001; NOV No. W2001-11-N-0002 issued November 19, 2001; and NOV No. W2001-12-N-0003 issued December 27, 2001.
3. The Town submitted the completed WWTP Permit application on October 29, 2001, and the final semiannual Appendix A monitoring results on February 7, 2002.

#### **SECTION D: Agreement and Order**

Accordingly the Board, by virtue of the authority granted it in Va. Code ' 62.1-44.15(8a), and (8d) orders the Town, and the Town agrees, to pay a civil charge of \$400.00 within 30 days of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check payable to the "Treasurer of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Town, for good cause shown by the Town, or on its own motion after notice and opportunity to be heard.
2. This Order addresses and resolves those violations specifically identified herein, including those matters addressed in the Warning Letters issued on September 10, September 24, and October 10, 2001 and NOV's issued on November 19, and December 27, 2001. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility as may be authorized by law; or (3) taking subsequent action to enforce the Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Town admits the jurisdictional allegations but not the factual findings, and conclusions of law contained herein.
4. The Town consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Town declares it has received fair and due process under the Administrative Process Act, Va. Code ' 2.2 - 4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.

6. Failure by the Town to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Town shall be responsible for its failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. The Town shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. The Town shall notify the DEQ Regional Director of NVRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order.

Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director within 24 hours of learning of any condition above, which the Town intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and the Town. Notwithstanding the foregoing, the Town agrees to be bound by any compliance date which precedes the effective date of this Order.

11. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Town. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Town from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By its signature below, the Town voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of \_\_\_\_\_, 2002.

\_\_\_\_\_  
Robert G. Burnley, Director  
Department of Environmental Quality

The Town of Middleburg voluntarily agrees to the issuance of this Order.

By: \_\_\_\_\_

Date: \_\_\_\_\_

Commonwealth of Virginia  
City/County of \_\_\_\_\_

The foregoing document was signed and acknowledged before me this \_\_\_\_ day of

\_\_\_\_\_, 2002 by \_\_\_\_\_, who is  
(name)

\_\_\_\_\_ for the Town of Middleburg.  
(title)

\_\_\_\_\_  
Notary Public

Consent Special Order  
Town of Middleburg  
Page 6

My commission expires: \_\_\_\_\_.